

APPEAL NO. 041900  
FILED SEPTEMBER 20, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 6, 2004. The hearing officer determined that the respondent's (claimant) impairment rating (IR) is 17% as certified by the designated doctor appointed by the Texas Workers' Compensation Commission (Commission). The appellant (self-insured) appealed this determination, asserting that the designated doctor misapplied the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides). The claimant responded, urging affirmance.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable injury on \_\_\_\_\_, and that the claimant reached maximum medical improvement on June 27, 2003. The sole issue in dispute was to determine the claimant's IR. Section 408.125(c) provides that if the designated doctor is chosen by the Commission, the report of the designated doctor shall have presumptive weight and the Commission shall base the IR on that report unless the great weight of the other medical evidence is to the contrary. Pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(i) (Rule 130.6(i)), the designated doctor's response to a Commission request for clarification is also considered to have presumptive weight as it is part of the designated doctor's opinion. See *also* Texas Workers' Compensation Commission Appeal No. 013042-s, decided January 17, 2002.

The designated doctor assigned a 17% IR of the upper extremity based on a resection of the distal clavicle, an abnormal motion of the right shoulder, and an axillary nerve motor deficit. The self-insured argues that the designated doctor misapplied the AMA Guides by assigning an impairment for both the abnormal motion of the right shoulder and an axillary nerve motor deficit loss of motor function. The self-insured argues that these impairments are duplicative and prohibited by the AMA Guides. The self-insured cites the language of the AMA Guides, page 3/46:

*If an impairment results strictly from a peripheral nerve lesion, the physician should not apply impairment percents from Section 3.1f through 3.1j (pp. 24 through 45) of this chapter, and this section, because a duplication and an unwarranted increase in the impairment percent would result. [Emphasis in the original.]*

We note that the next paragraph of the AMA Guides, page 3/46, states that:

If the restricted motion cannot be attributed to a peripheral nerve lesion, the motion impairment should be evaluated according to Section 3.1f through 3.1j and the nerve impairment according to this section.

The hearing officer reviewed the designated doctor's report and letter of clarification and he determined that the designated doctor properly applied the AMA Guides. The hearing officer was persuaded by the evidence that the designated doctor assigned an IR based on the claimant's restricted shoulder range of motion and nerve impairment, rather than from an impairment that resulted strictly from a peripheral nerve lesion as provided in the AMA Guides. Although there is conflicting evidence, the hearing officer concluded that the findings and opinions of the designated doctor were not overcome by the great weight of other medical evidence. Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

**RLD  
(ADDRESS)  
(CITY), TEXAS (ZIP CODE)**

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Veronica L. Ruberto  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Margaret L. Turner  
Appeals Judge